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PATENT  
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**UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application Of: )  
Russell G. Higuchi )  
 ) Group Art Unit: 1743  
 )  
Application Number: 08/968,208 )  
 ) Examiner: J. Snay  
 )  
Filed: November 12, 1997 )  
 )  
For: Instrument for Monitoring Nucleic )  
Acid Amplification )

**INFORMATION DISCLOSURE STATEMENT UNDER 37 CFR § 1.97(d) AND**  
**STATEMENT UNDER 37 CFR § 1.97(e)(2)**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In accordance with 37 CFR §§ 1.97 and 1.98, Applicant submits herewith patents, publications or other information (listed below and/or on the attached Substitute Form PTO-1449A) that may be material to the examination of this application, and in respect of which there may be a duty of disclosure as set forth in 37 CFR § 1.56, for consideration and to be made of record herein by the U.S. Patent and Trademark Office in the above-captioned application. Copies of the documents listed on the attached Substitute Form PTO-1449A are enclosed herewith.

**Legal Proceedings**

Applicant previously brought to the attention of the Patent Office various legal proceedings, certain of which relate to Japanese (Patent No. 3136129) and European (Patent No. 0 872 562 B) counterparts of the above-captioned application. The references listed on the attached Substitute Form PTO-1449A are papers recently filed by the parties in two of these proceedings:

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Applera v. Bio-Rad, Düsseldorf Regional Court Case No. 4a O 44/03; and

Applera v. MJ Research, Düsseldorf Regional Court Case No. 4a O 235/03.<sup>1</sup>

Cite No. 72 is an English language translation of Bio-Rad's Reply Brief dated March 22, 2004 filed in Applera v. Bio-Rad, Düsseldorf Regional Court Case No. 4a O 44/03. Cite No. 73 corresponds to Exhibit Collection B14 of this Reply Brief. The content of Exhibit Collection B14 is discussed at pages 19-20 of the Reply Brief. The Declarations by Drs. Manfred Eigen, Ruthild Winkler-Oswatitsch, Björn Friedrich Lindemann, Andreas Schweinhorst and Rölf Günther included in Exhibit Collection B14 at pages 64-67 and 68, respectively (English language translations at pages 82, 83 and 65-67, respectively), were previously brought to the attention of the Patent Office in an IDS filed on October 24, 2003 (as Cite Nos. 42). A reference including the excerpt of the Eigen "Report on Evolution Research" provided at pages 68-73 of Exhibit Collection B14 was also included with the October 24 IDS (as Cite No. 41). A document corresponding to Exhibit B15 mentioned in Cite No. 72 was previously brought to the attention of the Patent Office in an IDS filed on March 24, 2004 (as Cite No. 59).

It should be noted that although certain papers within Exhibit Collection B14 were brought to the attention of the Patent Office in an IDS filed more than three months ago, the Reply Brief and its Exhibit Collection B14, which are the items of information being submitted in this IDS, were not known to any individual designated in § 1.56(c) more than three months before the filing of this IDS, as stated below.

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<sup>1</sup> It is noted that the latter of these two proceedings was referred to in previous Information Disclosure Statements to as "Applera v. MJ Research, Düsseldorf Regional Court Case No. 4a O 262/02." The European counterpart (Patent No. 0872 562 B) of the above-captioned application was added to ongoing Case No. 4a O 202/02 in a Brief submitted on June 20, 2003 (see Cite No. 67 of Applicant's IDS filed March 24, 2004). The portion of the proceeding related to this European counterpart patent has been assigned Düsseldorf Regional Court Case No. 4a O 235/03. Accordingly, this proceeding will be referred to hereinafter as Düsseldorf Regional Court Case No. 4a O 235/03.

Cite No. 74 is an English language translation of Applera's Answer to Bio-Rad's Reply Brief, filed on March 29, 2004 in Applera v. Bio-Rad, Düsseldorf Regional Court Case No. 4a O 44/03.

Cite No. 75 is an English language translation of MJ Research's Answer dated March 26, 2004, filed in Applera v. MJ Research, Düsseldorf Regional Court Case No. 4a O 235/03.

In accordance with 37 CFR § 1.97(e)(2), the undersigned hereby states that no item of information contained in this Information Disclosure Statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the undersigned after making a reasonable inquiry, no item of information contained in this Information Disclosure Statement was known to any individual designated in § 1.56(c) more than three months prior to the filing of this information disclosure statement.

While the information and references disclosed in this Information Disclosure Statement may be "material" pursuant to 37 CFR § 1.56, it is not intended to constitute an admission that any patent, publication or other information referred to therein is "prior art" for this invention unless specifically designated as such.

In accordance with 37 CFR § 1.97(g), the filing of this Information Disclosure Statement shall not be construed to mean that a search has been made or that no other material information as defined in 37 CFR § 1.56(a) exists.

In accordance with 37 CFR § 1.97(d), this Information Disclosure Statement is being submitted prior to or concomitant with payment of the issue fee in the above-captioned application and is accompanied by a statement under 35 CFR § 1.97(e)(2) and the fee set forth in 37 CFR § 1.17(p). Accordingly, it is submitted that this Information Disclosure Statement is in compliance with 37 CFR § 1.98 and MPEP § 609 and consideration of the foregoing plus the prompt return of a copy of the enclosed Form PTO-1449 with the Examiner's initials in the left column in accordance with MPEP § 609 are respectfully requested.

It is believed that the only fee due in connection with this Information Disclosure Statement is the fee set forth in 37 C.F.R § 1.17(p). The Commissioner is authorized to charge this required fee, which is believed to be \$180, as well as any other fee that may be required in connection with this Information Disclosure Statement to the undersigned's Deposit Account No. 01-2213 (Order No. 4380US).

Respectfully submitted,

Dated: April 8, 2004

By:

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